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11 Attorneys for Plaintiffs

12 VIVID ENTERTAINMENT, LLC; CALIFA  
13 PRODUCTIONS, INC.; JANE DOE A/K/A  
14 KAYDEN KROSS; AND JOHN DOE A/K/A  
LOGAN PIERCE

15  
16 UNITED STATES DISTRICT COURT

17 CENTRAL DISTRICT OF CALIFORNIA

18  
19 VIVID ENTERTAINMENT, LLC;  
20 CALIFA PRODUCTIONS, INC.;  
JANE DOE a/k/a Kayden Kross;  
and JOHN DOE a/k/a Logan Pierce,

21 Plaintiffs,

22 vs.

23 JONATHAN FIELDING, Director of  
24 Los Angeles County Department of  
Public Health, JACKIE LACEY, Los  
25 Angeles County District Attorney, and  
COUNTY OF LOS ANGELES

26 Defendants.  
27  
28

) Case No.

) **COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

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1 For their complaint, plaintiffs Vivid Entertainment, LLC ("Vivid"), Califa  
2 Productions, Inc. ("Califa"), Jane Doe, also known professionally as Kayden Kross  
3 ("Ms. Kross"), and John Doe, also known professionally as Logan Pierce ("Mr.  
4 Pierce"), allege as follows:

## 5 INTRODUCTION

6 1. It is beyond dispute that erotic adult films are protected by the First  
7 Amendment, as applied to the States and their subdivisions under the Fourteenth  
8 Amendment. *See, e.g., Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 65 (1981);  
9 *City of Renton v. Playtime Theatres*, 475 U.S. 41 (1986). Plaintiffs Vivid, Califa,  
10 Ms. Kross, and Mr. Pierce count themselves among the many producers, distributors,  
11 and performers of works that explore the "great and mysterious motive force in  
12 human life ... [which] has indisputably been a subject of absorbing interest to  
13 mankind through the ages," *i.e.*, sexuality and sexual relations. *Roth v. U.S.*, 354  
14 U.S. 476, 487 (1957). Through this action, Plaintiffs seek to protect the First  
15 Amendment rights of producers of sexually oriented films, to uphold the supremacy  
16 of the law of the State of California, and to protect the livelihoods of those who work  
17 in and around the adult film industry.

18 2. This civil rights action for declaratory and injunctive relief accordingly  
19 seeks to enjoin the enforcement of a new Los Angeles County ordinance that imposes  
20 an intolerable burden on the exercise of rights under the First Amendment to the  
21 United States Constitution.

22 3. The County of Los Angeles Safer Sex in the Adult Film Industry Act  
23 ("Measure B") forces producers of adult films, before any production can occur, to  
24 pay a fee and obtain a permit from the County Department of Public Health under a  
25 regime that requires all principals and management-level employees – including film  
26 directors – to complete blood borne pathogen training, and that allows immediate  
27 and potentially permanent permit revocation without prior notice. Measure B also  
28

1 requires the use of condoms during production of adult films, though the performers  
2 are, as are all performers in adult films, consenting adults engaged in constitutionally  
3 protected expression. A true and correct copy of Measure B is attached to this  
4 Complaint.

5 4. In this way, Measure B constitutes a facial violation of numerous  
6 protections provided by the First Amendment and is preempted by California state  
7 laws and regulations. Measure B claims to address the spread of HIV/AIDS and  
8 other sexually transmitted diseases, but improperly places unnecessary restrictions  
9 only on the adult film industry, and on its freedoms of expression and speech.

10 5. Measure B is unnecessary, as the adult film industry already has strict  
11 requirements in place to protect its performers. Measure B's claims to the contrary  
12 are unsupported and inaccurate. Measure B's requirements also tread into an area  
13 that is the exclusive provenance of the California Department of Health and Human  
14 Services, and its Division of Occupational Safety and Health, and is thus preempted.

15 6. Measure B also subjects the adult film industry to draconian penalties  
16 that the County Department of Public Health is given total discretion to apply at its  
17 whim. These potential penalties directly affect the livelihoods of the thousands of  
18 people who depend on the adult film industry for their livelihoods.

19 7. Measure B further fails to reach all those engaged in the behavior it  
20 wishes to regulate, and more importantly fails to meaningfully address the public  
21 health issues it cites as its reason for existence.

## 22 PARTIES

23 8. Plaintiff Vivid Entertainment, LLC is a limited liability corporation duly  
24 organized and existing under the laws of the State of California, with its principal  
25 place of business in the City of Los Angeles, County of Los Angeles, California.  
26 Vivid has always placed heavy emphasis on high quality erotic film entertainment.  
27 Vivid employs a multitude of individuals in Los Angeles County in the advertising,  
28 distribution and sale of adult films, apparel, books, and a range of other products.

1           9. Plaintiff Califa Productions, Inc., is a corporation duly organized and  
2 existing under the laws of the State of California, with its principal place of business  
3 in the City of Los Angeles, County of Los Angeles, California. Califa produces adult  
4 films exclusively for Vivid. Califa employs a multitude of individuals in Los  
5 Angeles County in the production of adult films.

6           10. Plaintiff Kayden Kross is a performer who appears in adult films  
7 produced in the County of Los Angeles, California. Ms. Kross has worked in adult  
8 films for over six years, has during that time been a contract performer for Vivid,  
9 Adam & Eve, and Digital Playground, and has appeared in approximately 75 adult  
10 films. She has also appeared in several episodes of *The Block*, a reality program  
11 on G4TV, and of *Life on Top* on Cinemax, as well as in the FX comedy series *The*  
12 *League*, the theatrical motion picture *The Obsession*, and as a lead in the film *As*  
13 *Wonderland Goes By*. Ms. Kross writes columns regularly for publications such  
14 *Complex* and *Xbiz* magazines, has contributed to *Timothy McSweeney's Internet*  
15 *Tendency*, and her short story "Plank" appeared in the 2012 e-book collection *Forty*  
16 *Stories: New Writing from Harper Perennial*. Ms. Kross has also won several  
17 awards for her roles in adult films, from AVN and XBIZ, among others. Ms. Kross's  
18 expressive contributions to adult films are directly affected by requirements imposed  
19 under Measure B.

20           11. Plaintiff Logan Pierce is a performer who appears in adult films pro-  
21 duced in the County of Los Angeles, California. Mr. Pierce has worked in adult  
22 films for approximately one year, during which time he has performed in films pro-  
23 duced by Penthouse, Brazzers, Twistys, and Reality King, appearing in approxi-  
24 mately 150 adult films. Mr. Pierce's expressive contributions to these films are  
25 directly affected by requirements imposed under Measure B.

26           12. All Defendants are sued in their official capacities only.  
27  
28

13. Defendant County of Los Angeles, California, is a county governmental unit created and authorized under the laws of California. It is authorized by law to maintain a Department of Public Health.

14. Defendant Dr. Jonathan E. Fielding, MD, MPH, is the Director of the Los Angeles County Department of Public Health. Dr. Fielding is responsible for all public health functions for the County and for overseeing the Department of Public Health's staff of over 4,000 individuals.

15. Defendant Jackie Lacey, Los Angeles County District Attorney, is a public official of the County of Los Angeles, and performs official duties within the County of Los Angeles. She is the chief law enforcement officer for the County of Los Angeles.

#### JURISDICTION AND VENUE

16. This action arises under 42 U.S.C. § 1983 and the United States Constitution. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343, as well as under this Court's Original Jurisdiction, under which the Court can entertain an action to redress a deprivation of rights guaranteed by the United States Constitution. This Court further has supplemental jurisdiction over state law claims under 28 U.S.C. § 1367(a). Declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202. See also Fed. R. Civ. P. 65.

17. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because one or more of the named Defendants perform their official duties in this District, and a substantial part of the events or omissions giving rise to Plaintiff's claims have occurred or will occur in this District.

#### FACTUAL ALLEGATIONS

18. The creation, production, promotion and sale of adult films and related materials are protected under the First Amendment to the United States Constitution. These activities and speech are further protected under the laws of the State of California.

1 19. Despite these clear protections, certain individuals and state actors con-  
2 tinue to try and limit certain forms of expression and speech, using various tactics  
3 including claiming to protect public health.

4 20. The adult film industry has been aware of the potential health risks to its  
5 performers from exposure to blood borne pathogens and has taken multiple steps to  
6 address these risks.

7 21. When the public was first becoming aware of diseases like HIV/AIDS  
8 and hepatitis, the adult film industry made information available to those working in  
9 the industry by describing the diseases, how they were transmitted, and ways to pre-  
10 vent exposure.

11 22. Since the mid- to late-1990s, all leading creators and producers of adult  
12 film content, including Plaintiffs Vivid and Califa, have implemented strict require-  
13 ments for each production to protect the models and performers, and to prevent the  
14 spread of HIV and other sexually transmitted diseases.

15 23. Members of the adult film industry, including Plaintiff Vivid, assisted  
16 in founding the Adult Industry Medical Health Care Foundation ("AIM"), a testing  
17 and screening facility that provided HIV and STD testing and treatment, as well as  
18 counseling services and support group programs, to individuals who work in the  
19 adult film industry, as well as to the general public.

20 24. More recently, the Free Speech Coalition, the adult entertainment  
21 industry's trade association, helped to establish Adult Production Health & Safety  
22 Services ("APHSS") to assist adult film producers and performers in ensuring safe  
23 and healthy work environments for all participants. APHSS's Advisory Council  
24 includes representatives from adult film producers, adult film performers,  
25 performers' agents, a Medical Consultant, and a workplace safety attorney.

26 25. APHSS's Medical Consultant establishes, with input from Free Speech  
27 Coalition staff, the APHSS Advisory Council, and STD experts, APHSS's policies  
28 and procedures for STD testing and guidelines for STD treatment by outside clini-

1 cians. APHSS's Medical Consultant also updates APHSS's policies and procedures  
2 on a regular basis, performs periodic quality assurance reviews, and serves as the  
3 liaison with testing organizations, outside clinicians, and regulators.

4 26. APHSS maintains a database of approved labs that have agreed to  
5 follow basic testing and notification protocols for HIV and STD safety in adult films.  
6 This has resulted in a nationwide network of clinics that can be relied upon by those  
7 who perform or intend to perform in adult films, for HIV and STD testing. APHSS-  
8 approved clinics screen patients for HIV using the PCR/DNA test, and screen for  
9 Chlamydia and gonorrhea as well.

10 27. APHSS-approved clinics provide continually updated information to  
11 APHSS on adult film performers who have a current negative-test status, based on  
12 testing every 14-28 days, and who are thus available for work in adult films. APHSS  
13 in turn maintains a database of performers who have current negative-test results at  
14 APHSS-approved labs.

15 28. The adult film industry also maintains a subsidy fund for APHSS  
16 testing. Such subsidization makes testing affordable and accessible to all performers  
17 who appear or intend to appear in adult films, including those for whom testing might  
18 otherwise present a financial barrier or burden.

19 29. Adult film producers and performers can access APHSS's database  
20 of available performers to confirm the negative-test status of any performer on any  
21 given date of production. Under this regime, prior to any filming or production, all  
22 performers and models must present a driver's license and test results from the prior  
23 period showing a negative test for HIV and other STDs.

24 30. All producers of adult films require testing at least once every 28 days,  
25 and some require testing every 14 days. However, the highest-volume producer of  
26 adult films – and thus the producer deemed most desirable to work for by adult film  
27 performers – requires testing every 14 days for performers in its films. As a result,  
28 14-day testing is followed by a substantial proportion of adult film performers, and



1 virtually eliminates the possibility of HIV transmission, given the time required be-  
2 tween initial infection and progressing to having a viral load necessary for sexual  
3 transmission/infection.

4 31. Compliance with this testing regime is universal. Without a current,  
5 negative test, or proper identification, no individual is allowed to participate in the  
6 creation of content in a way that would potentially expose anyone else to HIV or any  
7 other sexually transmitted disease. No law-abiding adult film producer would allow  
8 a performer to appear without a current APHSS or equivalent negative-test confir-  
9 mation, and no performer would agree to film without confirming his or her co-  
10 performers' negative test.

11 32. In addition to these careful steps implemented and enforced unilaterally  
12 by the adult film industry, the State of California has enacted its own laws and regu-  
13 lations regarding exposure to blood borne pathogens.

14 33. The California Occupational Safety and Health Standards Board ("Stan-  
15 dards Board"), and the Division of Occupational Safety and Health ("Cal-OSHA"),  
16 have exclusive jurisdiction over the field of occupational safety and health in Cali-  
17 fornia workplaces, including those in Los Angeles County. California state law  
18 specifically preempts cities and counties from regulating workplace health and  
19 safety standards related to blood borne pathogens.

20 34. California Labor Code section 142.3, subsection (a)(1) mandates that  
21 "[t]he [Standards] [B]oard shall be the only agency in the state authorized to adopt  
22 occupational safety and health standards." Labor Code section 144.7 requires the  
23 Standards Board to adopt a blood borne pathogen standard mandating employees  
24 exposed to blood borne pathogens in the workplace be provided with barrier pro-  
25 tection. Title 8, Section 5193 of the California Code of Regulations contains the  
26 prescribed standards, and requires all employees exposed to blood borne pathogens,  
27 including semen and vaginal secretions, be provided with "personal protective  
28 equipment" by their employers. 8 Cal. Code Regs. Tit. 8, § 5193(b).

1           35. Regulation 5193 and Labor Code section 144.7 set forth regulations to  
2 be followed by the adult film industry. The California legislature has made it clear  
3 that the Standards Board has exclusive jurisdiction over conflicting occupational  
4 health and safety standards. This exclusive jurisdiction preempts Defendants from  
5 adopting any such standards. Furthermore, Defendants are preempted from  
6 enforcing Regulation 5193 and Labor Code section 144.7 in any manner.

7           36. Despite the numerous and explicit protections for adult films under  
8 the First Amendment and California law, the adult film industry's careful protections  
9 for its performers and models, which are fastidiously followed and enforced, and the  
10 Standards Board's exclusive jurisdiction over occupational health and safety stan-  
11 dards, Defendants allowed Measure B to be placed on the ballot for the November  
12 2012 election. Measure B was then approved by a 57-43% margin.

13           37. In its text, Measure B acknowledges that "the production of sexually  
14 explicit adult films is legal in the State of California," and that Regulation 5193  
15 provides requirements for the protection of performers and models in adult films.

16           38. Measure B makes numerous other claims about links between the adult  
17 film industry and sexually transmitted infections that are misleading and incorrect.

18           39. Measure B provides no evidentiary support for these claims, and does  
19 not reference any source materials, thus calling into question the veracity and  
20 accuracy of the statements purporting to support the need for Measure B.

21           40. Despite its questionable foundation, Measure B implements restrictions  
22 and requirements for the entire adult film industry and all those who depend on it  
23 for their livelihoods, and grants essentially unlimited investigation and enforcement  
24 powers to the Department and its employees.

25           41. Measure B contains two primary provisions. First, it requires producers  
26 of adult films to obtain a permit from the Los Angeles County Department of Public  
27 Health ("Department") before any production can take place. In order to secure  
28 a permit, producers must pay a fee and complete an application form evidencing

1 successful completion of a blood borne pathogen training course approved by the  
2 Department. If the producer is a business entity, then *all* of the “principals and  
3 management-level employees” (which are undefined terms), including any and all  
4 film directors, must complete the required course. Once an application is approved  
5 and a permit issued, it must be displayed at all times where any adult film is being  
6 filmed. A permit is valid for two years, but is at all times subject to immediate and  
7 potentially permanent revocation.

8 42. Second, Measure B requires the use of condoms by performers for  
9 all acts of anal or vaginal sex during the production of adult films, although the  
10 performers are, as are all performers in adult films, consenting adults engaging in  
11 constitutionally protected expression. This requirement necessarily intrudes on the  
12 expressive elements of adult films.

13 43. Measure B grants the Department broad, vague, and unlimited powers  
14 of enforcement.

15 44. Department inspectors are granted access to “any location suspected  
16 of conducting any activity regulated by” Measure B, without notice. Moreover,  
17 Department inspectors may take possession of “any sample, photograph, record or  
18 other evidence, including any documents *bearing on*” compliance with Measure B,  
19 without any limitations or cause requirement. Thus, a Department inspector could  
20 seize personal property, private documents, and take “samples” from any person, that  
21 they, in their sole discretion determine to have “bearing on” Measure B compliance,  
22 without any due process protections for those who may be present at a location where  
23 the inspector “suspects” an activity regulated by Measure B is taking place.

24 45. The Department may, at any time and without prior notice, suspend  
25 or revoke the required permit for *any* violation of Measure B’s provisions, or of  
26 *any other laws* – which are not identified or limited – if the violation may create a  
27 risk for performers of exposure to sexually transmitted diseases, which “risks” also  
28 are undefined. If a Measure B permit is suspended or revoked, work is not only

1 stopped on a given production, but the producer cannot engage in *any* filming, thus  
2 prohibiting the creation of other works and placing the livelihoods of hundreds of  
3 individuals in limbo.

4 46. If a permit is suspended, the Department may refuse, with unfettered  
5 discretion, to reinstate the permit, or to issue a new permit to a given producer.  
6 Under Measure B's lack of specific standards and provisions, the Department has  
7 the ability – based on a single technical violation – to destroy, almost overnight, the  
8 entire business of a given film producer, and to eliminate the jobs of all its employees  
9 and contractors. Permit suspension or revocation accordingly results in the producer  
10 no longer being able to produce adult films, and consequently stands to substantially  
11 reduce or stifle sexually expressive speech.

12 47. Any person determined by the Department to have violated Measure B  
13 is also subject to fines, civil actions, and even jail time, for *any* perceived violation,  
14 even on a first offense. Measure B does not differentiate between an individual who,  
15 on one occasion, failed to post the required notice with the necessary 36-point font,  
16 and an individual who has repeatedly violated the statute over an extended period of  
17 time.

18 48. Measure B also imposes a fee structure without giving the Department  
19 any guidance over how to set the fees, other than by stating it “shall be set ... in an  
20 amount sufficient to provide for the cost of any necessary enforcement.” Though the  
21 Department has stated that Measure B has become effective, it has not conducted any  
22 proceedings, conducted any analyses, or otherwise taken steps to establish the proper  
23 amount of permitting fees. Instead, it has set a “provisional fee” ranging from \$2,000  
24 to \$2,500 per year, without any findings or factual basis for the amount, or any expla-  
25 nation how it will determine where within the range to set the fee for any specific  
26 applicant or permittee.

27 49. Despite all of these requirements and enforcement provisions, Measure  
28 B fails to even cover all those involved in creating adult films. Fueled in part by

1 the age of social media, there are many types of adult films produced for non-  
2 commercial purposes that are not covered by Measure B, but that still present the  
3 public health issues Measure B purports to address. Moreover, such productions  
4 lack the protections of the self-regulatory measures the adult film industry has  
5 adopted and enforces.

6 50. Measure B applies only to a small segment of the population of Los  
7 Angeles County, and fails to address the risks of sexually transmitted diseases in the  
8 general population. At the same time, it threatens the livelihoods of a much larger  
9 percentage of the population. It is estimated that there are 1,500 active adult film  
10 performers nationwide, working primarily in Los Angeles and Florida, with 300  
11 living full-time in the Los Angeles area, and it is further estimated producers of adult  
12 film employ approximately 10,000 people in the Los Angeles area all told. It is also  
13 estimated that the adult film industry contributes approximately \$1 billion to the local  
14 economy of the Los Angeles area. Measure B puts these expenditures and this  
15 employment at risk. Worse still, Measure B targets producers of adult films by  
16 stifling or otherwise adversely affecting the exercise of First Amendment rights to  
17 engage in sexually expressive speech.

## 18 **COUNT I**

### 19 **SECTION 1983 CLAIM FOR VIOLATION OF THE FIRST AMENDMENT** 20 **BY SUBJECTING FREEDOM OF EXPRESSION TO A REFERENDUM**

21 51. Plaintiffs re-allege and incorporate by reference all previous allegations  
22 as if fully set forth herein.

23 52. Plaintiffs are entitled to the protection of the First Amendment because  
24 their activities, including the creation and sale of adult entertainment materials,  
25 constitute protected expression and speech, or, alternatively, protected commercial  
26 speech, which is not obscene or unlawful.

27 53. The provisions of Measure B violate the First Amendment by curtailing  
28 freedom of expression via a county ballot initiative. The exercise of First Amend-

1 | ment freedoms cannot be limited by referendum. *Buckley v. American Constitutional*  
2 | *Law Found.*, 525 U.S. 182, 194 (1999) (“The voters may no more violate the United  
3 | States Constitution by enacting a ballot issue than the general assembly may by  
4 | enacting legislation.”); *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624  
5 | (1943) (“One’s right to life, liberty, and property, to free speech, a free press, free-  
6 | dom of worship and assembly, and other fundamental rights may not be submitted  
7 | to vote; they depend on the outcome of no elections.”). Imposing regulation in this  
8 | way is inherently content-based. *Board of Regents of the Univ. of Wisconsin Sys. v.*  
9 | *Southworth*, 529 U.S. 217, 235-36 (2000). The fact that Measure B was presented as  
10 | a “public health” ballot measure does not immunize it from First Amendment  
11 | scrutiny *Sorrell v. IMS Health*, 131 S. Ct. 2653 (2011).

12 | 54. Measure B also violates the First Amendment by purporting to impose  
13 | its restrictions based on “findings” in the text of the initiative, which lack a legis-  
14 | lative record by which to measure whether the government’s burden has been met.  
15 | Thus, Measure B cannot survive any level of constitutional scrutiny.

16 | 55. Defendants, acting under color of the Los Angeles County Code and  
17 | state law, have threatened to and will enforce and implement the challenged pro-  
18 | visions against Plaintiffs and others in violation of their First Amendment rights.

19 | 56. As a direct and proximate result of Defendants’ unlawful conduct,  
20 | Plaintiffs will further suffer irreparable harm, which will continue absent injunctive  
21 | relief.

22 | **COUNT II**  
23 | **SECTION 1983 CLAIM FOR VIOLATION OF THE FIRST AMENDMENT**  
24 | **THROUGH PRIOR RESTRAINT (42 U.S.C. § 1983)**

25 | 57. Plaintiff re-alleges and incorporates by reference all previous allegations  
26 | as if fully set forth herein.

27 | 58. Measure B preemptively prohibits the production of any adult film if its  
28 | director (among others) has not completed a blood borne pathogen training course

1 affirmatively approved by the Department, if the production has not secured a permit  
2 issued by the Department, and/or if the performers do not use condoms for all acts of  
3 anal or vaginal sex, even if in their sound discretion and artistic judgment they would  
4 opt to forgo doing so. Measure B also prohibits the production of any adult film by  
5 any entity that has had a permit suspended or revoked, including even creation of  
6 other works having nothing to do with the permit suspension/revocation. The  
7 Department is granted unlimited, standardless discretion to undertake such  
8 suspensions and/or revocations.

9         59. Measure B further empowers Department inspectors to take possession  
10 of "any evidence" that "bears on" compliance with Measure B, without limitations  
11 or a cause requirement, which conceivably could include sole copies of expressive  
12 works produced in alleged violation of Measure B. In addition, Measure B permits  
13 the suppression of expression and speech by imposing serious civil and criminal  
14 penalties for non-compliance with its permitting and/or barrier-protection  
15 requirements.

16         60. Measure B thus violates the First Amendment by standing as an  
17 unconstitutional prior restraint upon protected expression and upon the creation and  
18 dissemination of protected speech.

19         61. Defendants, acting under color of the Los Angeles County Code and  
20 state law, have threatened to and will enforce and implement the challenged pro-  
21 visions against Plaintiffs and others in violation of their First Amendment rights.

22         62. As a direct and proximate result of Defendants' unlawful conduct,  
23 Plaintiffs will further suffer irreparable harm, which will continue absent injunctive  
24 relief.

**COUNT III**

**SECTION 1983 CLAIM FOR VIOLATION OF THE FIRST AMENDMENT  
THROUGH FEES THAT IMPOSE A PRIOR RESTRAINT AND THAT ARE  
NOT LIMITED TO THE EXPENSE INCIDENT TO ADMINISTRATION OF  
PERMITTING AND ENFORCEMENT (42 U.S.C. § 1983)**

63. Plaintiff re-alleges and incorporates by reference all previous allegations as if fully set forth herein.

64. Measure B requires securing a permit from the Department, which in turn requires payment of the permitting fee, as a precondition to the production of any adult film.

65. Measure B does not provide the Department any guidance on how to set the fee, other than by stating it “shall be ... an amount sufficient to provide for the cost of any necessary enforcement.”

66. The Department set a “provisional fee” ranging from \$2,000 to \$2,500 per year. This “range” was established without analysis, findings or factual basis, or any explanation how the Department will determine where within the range to set the fee for particular permittees.

67. Establishment of the fee regime under Measure B as a precondition to producing adult films serves as a prior restraint on protected speech.

68. Due to the Department’s failure to obtain reliable evidence supporting the provisional fee, and due to Measure B’s failure to limit the fee to that which suffices to provide for the cost of enforcement, or provide any parameters for setting fees in an amount sufficient to provide for enforcement, the permitting fee is not reasonably limited to expenses incident to enforcing Measure B. The permitting fee is consequently an unlawful tax on speech, rather than a fee incident to legitimate regulatory costs.

69. Defendants, acting under color of the Los Angeles County Code and state law, have announced that Measure B has taken effect and that payment of the “provisional fee” will be required immediately.



1       70. As a direct and proximate result of Defendants' unlawful conduct,  
2 Plaintiffs will further suffer irreparable harm, which will continue absent injunctive  
3 relief.

4                                   **COUNT IV**  
5       **SECTION 1983 CLAIM BASED ON TERMS AND PROVISIONS**  
6       **THAT ARE UNCONSTITUTIONALLY VAGUE**

7       71. Plaintiffs re-allege and incorporate by reference all previous allegations  
8 as if fully set forth herein.

9       72. Measure B incorporates the use of several terms without definition and  
10 in many instances defines terms in language that would leave persons of common  
11 intelligence unsure as to their specific meaning, forcing them to necessarily guess as  
12 to what specific actions and/or characteristics would be subject to regulation. These  
13 terms include, but are not limited to "adult film," "exposure control plan," "producer  
14 of adult film," "principals," "management-level employees," "commercial purposes,"  
15 "reasonably suspected," "hazardous condition," "interference," and other terms.

16       73. Measure B also incorporates several mandates without explanation,  
17 that are discretionary in nature, such that a person of common intelligence would  
18 be unsure as to their specific meaning, forcing them to necessarily guess as to what  
19 specific actions are required and/or prohibited under the regulation. These mandates  
20 include, but are not limited to:

- 21           i. "Any permit issued pursuant to this chapter *may* be suspended or  
22           revoked by the department and fines consistent with the provisions  
23           of this chapter *may* be imposed by the department for a violation of  
24           this chapter *or any other violation of law* creating a risk of exposing  
25           performers to sexually transmitted infections ...." § 11.39.110.A  
26           (emphasis added).
- 27           ii. "For permits that have been suspended or revoked, the notice of  
28           decision shall specify the acts or omissions found to be in violation

- 1 of this chapter, and, in the case of a suspended permit, shall state the  
2 extent of the suspension. The notice of decision shall also state the  
3 terms upon which the permit may be reinstated or reissued, *if any*.”  
4 § 11.39.110.D (emphasis added).
- 5 iii. “Notwithstanding any other provision of this chapter, if any *immedi-*  
6 *ate danger to the public health or safety* is found or is *reasonably*  
7 *suspected*, the department *may* immediately suspend the adult film  
8 production public health permit, initiate a criminal complaint *and/or*  
9 impose *any* fine permitted by this chapter .... Immediate danger to  
10 the public health and/or safety shall include *any* condition, based  
11 upon inspection findings *or other evidence*, that *can* cause, or is  
12 *reasonably suspected* of causing, infection or disease transmission,  
13 or *any* known or *reasonably suspected hazardous condition*.”  
14 § 11.39.110.E (emphasis added).
- 15 iv. “The department may ... modify, suspend, revoke *or* continue all  
16 such actions previously imposed upon a permittee ... for violations  
17 of this chapter *or any other laws or standards affecting public health*  
18 *and safety* ... or the exposure control plan of the permittee, *or any*  
19 *combination thereof*, or for *interference* with a county health  
20 officer’s performance of duty.” § 11.39.110.F (emphasis added).
- 21 v. “[T]he department may impose a fine on persons violating *any*  
22 provision of this chapter or *any law, regulation or standard*  
23 *incorporated into this chapter*.” § 11.39.120.C (emphasis added).
- 24 vi. “Any person or entity who ... violates *any* law, ordinance or  
25 regulation governing *any activity regulated by this chapter* ...  
26 is guilty of a misdemeanor.” § 11.39.120.D (emphasis added).
- 27 vii. “The county health inspector may enter and inspect any location  
28 *suspected* of conducting *any activity regulated by this chapter* ...

1 and take possession of *any* sample, photograph, record or other  
2 evidence, including any documents *bearing on* adult film producer's  
3 compliance with the provisions of the chapter." § 11.39.130  
4 (emphasis added).

5 viii. "A civil action to enforce the provisions of this section may be  
6 brought by the county counsel, the district attorney or *any person*  
7 *directly affected* by said failure to comply with the provisions of this  
8 chapter." § 11.39.140 (emphasis added).

9 74. The vagueness and subjective definitions of the above terms and  
10 mandates do not provide adequate guidance to law enforcement officers and health  
11 department officials, who themselves would have to necessarily guess as to the  
12 meaning of these terms and mandates and differ as to their application, thus leading  
13 to differential application of the law.

14 75. Therefore, Measure B is unconstitutionally vague and is thus null and  
15 void *ab initio*.

16 76. Defendants, acting under color of the Los Angeles County Code and  
17 state law, have threatened to and will enforce and implement the challenged pro-  
18 visions against Plaintiffs and others in violation of their First Amendment rights.

19 77. As a direct and proximate result of Defendants' unlawful conduct,  
20 Plaintiffs will further suffer irreparable harm, which will continue absent injunctive  
21 relief.

22 **COUNT V**  
23 **SECTION 1983 CLAIM BASED ON UNCONSTITUTIONAL**  
24 **OVER- AND UNDER-INCLUSIVENESS**

25 78. Plaintiffs re-allege and incorporate by reference all previous allegations  
26 as if fully set forth herein.

27 79. An actual controversy has arisen and now exists between the parties  
28 regarding whether or not Measure B is both over- and under-inclusive.

1           80. Plaintiffs contend that Measure B is unconstitutionally over-inclusive  
2 because the adult film industry already engages in extensive actions to protect per-  
3 formers from sexually transmitted diseases.

4           81. Plaintiffs also contend that Measure B is unconstitutionally under-  
5 inclusive because it fails to deal with adult film productions which are not made  
6 for a commercial purpose, but still pose the same health risks Measure B purports  
7 to address.

8           82. Plaintiffs further contend Measure B is unconstitutionally under-  
9 inclusive because it affects only a very small segment of the population of Los  
10 Angeles County, and fails to address the risks of sexually transmitted diseases in  
11 the general population.

12           83. Plaintiffs contend that Measure B is therefore invalid and unenforceable  
13 due to its unconstitutional, over- and under-inclusive nature that prevents it from  
14 being narrowly tailored.

15           84. Plaintiffs additionally contend that Measure B is not tailored as is  
16 constitutionally required because it is a content-based regulation of protected speech  
17 that must be the least restrictive means of achieving its stated purposes, and at mini-  
18 mum must not burden substantially more speech than is necessary to achieve that  
19 purpose.

20           85. Measure B is not the least restrictive means of minimizing the spread of  
21 sexually transmitted infections resulting from production of adult films, and burdens  
22 substantially more speech than necessary, insofar as it rejected – without factual basis  
23 or any evidence-based findings – the screening and test-confirmation regime that the  
24 adult film industry already utilizes, and the County failed to consider any alternatives  
25 other than the permitting and barrier-protection requirements it enacted through a  
26 popular vote.

1 86. Plaintiffs are informed and believe, and on that information and belief  
2 allege, that Defendants dispute the Plaintiff's allegations in Paragraphs 80 through  
3 85, above.

4 87. Plaintiffs desire a judicial determination and declaration as to whether  
5 Measure B is impermissibly over and under inclusive.

6 88. A judicial declaration is necessary and appropriate at this time under  
7 the circumstances in order that Plaintiffs may ascertain the applicability and enforce-  
8 ability of Measure B, and conduct themselves so as to obey all valid and applicable  
9 statutes and regulations.

10 89. Defendants, acting under color of the Los Angeles County Code and  
11 state law, have threatened to and will enforce and implement the challenged pro-  
12 visions against Plaintiffs and others in violation of their First Amendment rights.

13 90. As a direct and proximate result of Defendants' unlawful conduct,  
14 Plaintiffs will further suffer irreparable harm, which will continue absent injunctive  
15 relief.

16 **COUNT VI**  
17 **SECTION 1983 CLAIM BASED ON VIOLATIONS OF DUE PROCESS**

18 91. Plaintiffs re-allege and incorporate by reference all previous allegations  
19 as if fully set forth herein.

20 92. The Due Process Clause of the Fourteenth Amendment guarantees that  
21 no person shall be deprived of life, liberty or property without due process of law.

22 93. Plaintiffs have liberty and property interests in the expressive works  
23 they create through the exercise of their First Amendment rights, in the documents  
24 and other personal property used to create those works, and in their ongoing freedom  
25 to continue to create such works.

26 94. Plaintiffs also have a liberty interest protected by the Fourth  
27 Amendment to be free from unreasonable searches and seizures of their persons,  
28 including their bodily fluids and other aspects of their physical persons, and a

1 property interest to be secure from unreasonable searches and seizures within the  
2 private spaces in which Plaintiffs engage in conduct that is filmed to create  
3 expressive works protected by the First Amendment.

4 95. Measure B allows Department inspectors to take possession of “any  
5 sample, photograph, record or other evidence, including any documents” that “bears  
6 on” compliance with Measure B, without any limitation or a cause requirement. This  
7 includes the authority to seize personal property, private documents, and “samples”  
8 from any person, without any due process protections for those that may be present  
9 locations where an inspector “suspects” activity regulated by Measure B is occurring.

10 96. Measure B also allows the Department to suspend or revoke, without  
11 prior hearing or any procedural safeguards whatsoever, the permit that Measure B  
12 requires producers of adult entertainment to acquire and maintain in order to lawfully

13 97. Defendants, acting under color of the Los Angeles County Code and  
14 state law, have threatened to and will enforce and implement the challenged pro-  
15 visions against Plaintiffs and others in violation of their First, Fourth and Fourteenth  
16 Amendment rights.

17 98. As a direct and proximate result of Defendants’ unlawful conduct,  
18 Plaintiffs will further suffer irreparable harm, which will continue absent injunctive  
19 relief.

20 **COUNT VII**  
21 **PREEMPTION BY STATE LAW**

22 99. Plaintiffs re-allege and incorporate by reference all previous allegations  
23 as if fully set forth herein.

24 100. An actual controversy has arisen and now exists between the parties  
25 regarding whether or not Measure B is preempted by state law.

26 101. Plaintiffs contend that Measure B is preempted by California Labor  
27 Code Sections 140, *et seq.*, and specifically California Labor Code Section 144.7  
28 and California Code of Regulations Title 8, Section 5193, which mandates the use

1 of barrier protection in the workplace when employees are exposed to blood borne  
2 pathogens.

3 102. Plaintiffs contend that the California Legislature expressly retained ex-  
4 clusive jurisdiction with Cal-OSHA for the enforcement of occupation safety and  
5 health standards adopted by the Standards Board. Labor Code Section 144, sub-  
6 section (e) provides “[n]othing in this section shall affect or limit the authority of any  
7 state or local agency as to any matter **other than the enforcement of occupational**  
8 **safety and health standards adopted by the [Standards] Board**” (emphasis  
9 added).

10 103. Plaintiffs contend that Labor Code Section 144.7 and California Code  
11 of Regulations Title 8, Section 5193 are occupational safety and health standards  
12 adopted by the Standards Board.

13 104. Plaintiffs contend that Measure B is inconsistent with and/or enters an  
14 area fully occupied by Labor Code Section 144.7 and California Code of Regulations  
15 Title 8, Section 5193, and therefore is preempted.

16 105. Plaintiffs are informed and believe, and on that information and belief  
17 allege, that Defendants dispute the Plaintiff’s allegations in Paragraphs 101 through  
18 104, above.

19 106. Plaintiffs desire a judicial determination and declaration as to whether  
20 Measure B is preempted by state law.

### 21 PRAYER FOR RELIEF

22 WHEREFORE, Plaintiffs pray for relief against Defendant as follows:

23 1. An order enjoining and restraining Defendants, and their officers,  
24 agents, servants, employees, and attorneys, and those in active concert or partici-  
25 pation with them who receive actual notice of the injunction, from enforcing Los  
26 Angeles County Measure B.

27 2. A declaration that Los Angeles County Measure B violates the First  
28 Amendment to the United States Constitution.

1           3.     A declaration that Los Angeles County Measure B violates due process  
2 under the Fourteenth Amendment to the United States Constitution.

3           4.     A declaration that Los Angeles County Measure B is preempted under  
4 California state law.

5           5.     An award to Plaintiffs of their reasonable costs and attorneys' fees; and

6           6.     Such other and further relief as the Court deems just.

7 DATED: January 10, 2013

LIPSITZ GREEN SCIME CAMBRIA LLP  
PAUL J. CAMBRIA, JR.

SANTEN & HUGHES LPA  
H. LOUIS SIRKIN

DAVIS WRIGHT TREMAINE LLP  
ROBERT CORN-REVERE  
RONALD G. LONDON  
JANET L. GRUMER  
MATTHEW D. PETERSON

15 By:   
16 Matthew D. Peterson

17 Attorneys for Plaintiffs  
18 VIVID ENTERTAINMENT, LLC;  
19 CALIFA PRODUCTIONS, INC.;  
20 JANE DOE a/k/a Kayden Kross; and  
21 JOHN DOE a/k/a Logan Pierce  
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28



1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs Vivid Entertainment, LLC, Califa Productions, Inc., Jane Doe a/k/a  
3 Kayden Kross, and John Doe a/k/a Logan Pierce, hereby demand a trial by jury as  
4 provided for by Rule 38(a) of the Federal Rules of Civil Procedure.

5  
6 DATED: January 10, 2013

LIPSITZ GREEN SCIME CAMBRIA LLP  
PAUL J. CAMBRIA, JR.

7  
8 SANTEN & HUGHES LPA  
H. LOUIS SIRKIN

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15 By: 

Matthew D. Peterson

16 Attorneys for Plaintiffs  
17 VIVID ENTERTAINMENT, LLC;  
18 CALIFA PRODUCTIONS, INC.;  
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20 JOHN DOE a/k/a Logan Pierce  
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## TEXT OF THE PROPOSED MEASURE COUNTY OF LOS ANGELES SAFER SEX IN THE ADULT FILM INDUSTRY ACT

The people of the County of Los Angeles ordain as follows:

### SECTION 1. TITLE

This ordinance shall be known and may be cited as the County of Los Angeles Safer Sex in the Adult Film Industry Act.

### SECTION 2. FINDINGS AND DECLARATION

The people of the County of Los Angeles hereby find and declare all of the following:

- (a) The HIV/AIDS crisis, and the ongoing epidemic of sexually transmitted infections as a result of the making of adult films, has caused a negative impact on public health and the quality of life of citizens living in Los Angeles.
- (b) Safer sex practices are a prime method of preventing and reducing the spread of HIV/AIDS and other sexually transmitted infections.
- (c) The California Supreme Court has determined that the production of sexually explicit adult films is legal in the State of California.
- (d) The Los Angeles County Department of Public Health has documented widespread transmission of sexually transmitted infections associated with the activities of the adult film industry within Los Angeles County.
- (e) The Los Angeles County Department of Public Health has stated that the use of condoms is the best and most effective way to stem the spread of sexually transmitted infections within the adult film industry.
- (f) Multiple organizations committed to protecting the public health have called for use of condoms in the production of adult films, including the American Medical Association, the American Public Health Association, the California Conference of Local AIDS Directors, the California STD Controllers Association, the National Coalition of STD Directors, the National Association of City and County Health Officials, AIDS Healthcare Foundation and the California Medical Association.
- (g) Producers of adult films are required by California Code of Regulations Title 8, Section 5193 to use barrier protection, including condoms, to protect employees during the production of adult films.
- (h) The Los Angeles County Department of Public Health has found that many producers of adult films in Los Angeles consistently violate the worker safety provisions of California Code of Regulations Title 8, section 5193.

### SECTION 3. PURPOSE AND INTENT

The people of the County of Los Angeles hereby declare their purpose and intent in enacting this ordinance is to minimize the spread of sexually transmitted infections resulting from the production of adult films in the County of Los Angeles, which have caused a negative impact on public health and the quality of life of citizens living in Los Angeles. This Act will require the producers of adult films to obtain a permit from the Los Angeles County Department of Public Health to ensure that producers comply with preexisting law requiring, among other things, that performers are protected from sexually transmitted infections by condoms. The Act further authorizes the Los Angeles County Department of Public Health to take appropriate measures to



## TEXT OF THE PROPOSED MEASURE COUNTY OF LOS ANGELES SAFER SEX IN THE ADULT FILM INDUSTRY ACT

### SECTION 3. PURPOSE AND INTENT (Cont.)

enforce the Act, and conditions any film permit issued by the County for the production of an adult film on the use of condoms and other safety precautions.

### SECTION 4.

Chapter 11.39 is hereby added to Division 1 of Title 11 of the Los Angeles County Code to read:

#### CHAPTER 11.39

#### ADULT FILMS

#### ADULT FILMS, SHORT TITLE AND PUBLIC POLICY

##### Part 1 DEFINITIONS

##### 11.39.005 Definitions

*Unless the provision or the context otherwise requires, the definitions in this part shall govern the construction of this chapter.*

##### 11.39.010 Adult film

*An "adult film" is defined as any film, video, multimedia or other representation of sexual intercourse in which performers actually engage in oral, vaginal, or anal penetration, including, but not limited to, penetration by a penis, finger, or inanimate object; oral contact with the anus or genitals of another performer; and/or any other sexual activity that may result in the transmission of blood and/or any other potentially infectious materials.*

##### 11.39.020 County.

*"County" means the County of Los Angeles.*

##### 11.39.030 Department.

*"Department" means the Los Angeles County Department of Public Health.*

##### 11.39.040 Departmental regulations.

*"Departmental regulations" means the regulations pertaining to filming of adult films promulgated by the department as currently written or as may from time to time be amended. When adopted by the department, these regulations are incorporated in and become part of this chapter.*



## TEXT OF THE PROPOSED MEASURE COUNTY OF LOS ANGELES SAFER SEX IN THE ADULT FILM INDUSTRY ACT

### SECTION 4. (Cont.)

#### 11.39.050 Exposure control plan.

*"Exposure control plan" means a written plan that meets all requirements of Title 8 California Code of Regulations sections 3203 and 5193, to minimize employees' risk of exposure to blood or potentially infectious material.*

#### 11.39.060 Filmed or filming.

*"Filmed" and "filming" means the recording or real-time broadcast of any adult film, regardless of the medium used.*

#### 11.39.070 Potentially infectious material.

*"Potentially infectious material" shall have the same meaning as defined in Title 8 California Code of Regulations Section 519 3 (b), or any successor regulation.*

#### 11.39.075 Producer of adult film

*"Producer of adult film" means any person or entity that produces, finances, or directs, adult films for commercial purposes.*

#### 11.39.076 Permittee

*"Permittee " means any person or entity issued an adult film production public health permit pursuant to this chapter.*

### Part 2 GENERAL REQUIREMENTS

#### 11.39.080 Adult film production public health permit.

A. Producers of adult films shall obtain a public health permit by filing a completed application form with the department and paying the required fee. The fee shall be set by the Department in an amount sufficient to provide for the cost of any necessary enforcement.

1. During the twelve (12) months immediately following the effective date of this chapter, adult film production public health permits may be issued on a conditional basis. An individual issued a conditional permit shall have up to six months from the date of application to provide the department with proof of successful completion of a blood borne pathogen training course that has been approved by the department. If permittee is a business entity rather than an individual, permittee shall have up to six months from the date of application to provide the department with proof of successful completion of a blood borne pathogen training course that has been approved by the department for all principals and management-level employees of permittee, including, but not limited to, all film directors. Failure to provide such proof within the prescribed time shall cause the conditional adult film production public health permit to be revoked immediately.



## TEXT OF THE PROPOSED MEASURE COUNTY OF LOS ANGELES SAFER SEX IN THE ADULT FILM INDUSTRY ACT

### SECTION 4. (Cont.)

2. *At all times after the twelve (12) months following the effective date of this chapter, each applicant who is an individual must also provide the department with proof of successful completion of a blood borne pathogen training course that has been approved by the department. Each applicant who is a business entity rather than an individual must provide the department with proof of successful completion of a blood borne pathogen training course that has been approved by the department for all principals and management-level employees of permittee, including but not limited to all film directors.*

- B. *Upon successful completion of the permit application process described in subsection A of this section, the partment shall issue an adult film production public health permit to the applicant. The adult film production public health permit will be valid for two years from the date of issuance, unless revoked.*
- C. *No producer of adult films may engage in the making of adult films in Los Angeles County for commercial purposes unless that producer of adult films has a valid adult film production public health permit issued by the department.*
- D. *An adult film production public health permit is nontransferable.*

#### 11.39.090 *Posting requirements.*

- A. *The adult film production public health permit issued to the producer of adult films must be displayed at all times at the location where any adult film is filmed in an area that is visible to performers.*
- B. *A legible sign shall be displayed at all times at the location where any adult film is filmed in any conventional typeface with a font size not smaller than 36 points, that provides the following notice so as to be clearly visible to performers in said films:*

*The use of condoms is required for all acts of anal or vaginal sex during the production of adult films to protect performers from sexually transmitted infections.*

*Any public health concerns regarding any activities occurring during the production of any adult films should be directed to the Los Angeles County Department of Public Health:*

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*(the program office address and telephone number to be provided by the county health officer).*

#### 11.39.100 *Permit --Reporting requirements.*

*Every person that possesses a valid adult film production public health permit or registration shall report to the department any changes in status to the business made reportable by departmental regulations within fifteen (15) days of the change.*



## TEXT OF THE PROPOSED MEASURE COUNTY OF LOS ANGELES SAFER SEX IN THE ADULT FILM INDUSTRY ACT

### SECTION 4. (Cont.)

#### 11.39.100 *Permit --Reporting requirements.*

*Every person that possesses a valid adult film production public health permit or registration shall report to the department any changes in status to the business made reportable by departmental regulations within fifteen (15) days of the change.*

#### 11.39.110 *Permit--Suspension and revocation and fines.*

- A. *Any permit issued pursuant to this chapter may be suspended or revoked by the department and fines consistent with the provisions of this chapter may be imposed by the department for a violation of this chapter or any other violation of law creating a risk of exposing performers to sexually transmitted infections, including any violation of applicable provisions of the Los Angeles County Code, the California Health and Safety Code, the blood borne pathogen standard, California Code of Regulations Title 8, section 519.3 or the exposure control plan of the producer of adult films, or any combination of such violations. The failure of a producer of adult films to require performers to use condoms during any acts of vaginal or anal sexual intercourse is a violation of this chapter.*
- B. *Whenever the department determines that a permittee has failed to comply with the requirements of this chapter, any other violation of law creating a risk of exposing performers to sexually transmitted infections, including any violation of applicable provisions of the Los Angeles County Code, the California Health and Safety Code, the blood borne pathogen standard, California Code of Regulations Title 8, section 519.3 or the exposure control plan of the producer of adult films, or any combination thereof a written notice to comply shall be issued to the permittee. The notice to comply shall include a statement of the deficiencies found, set forth the corrective measures necessary for the permittee to be in compliance with this chapter, and inform the permittee that failure to comply may result in the imposition of a fine or other penalty, including suspension and/or revocation of any and all permits. The notice to comply shall also advise the permittee of his or her right to an administrative review.*
- C. *A written request for an administrative review must be made by the noticed permittee within fifteen (15) calendar days of the issuance of the notice to comply. The failure to request an administrative review within the prescribed time shall be deemed a waiver of the right to an administrative review. The administrative review shall be held within fifteen (15) calendar days of the receipt of a written request for a review. Upon the written request of permittee or on its own motion, the department may advance or postpone the scheduled administrative review date, if permittee demonstrates good cause.*
- D. *The department shall issue a written notice of decision specifying any penalties imposed on permittee to the permittee within five (5) days of the administrative review or waiver, excluding weekends and holidays. For permits that have been suspended or revoked, the notice of decision shall specify the acts or omissions found to be in violation of this chapter, and, in the case of a suspended permit, shall state the extent of the suspension. The notice of decision shall also state the terms upon which the permit may be reinstated or reissued, if any.*



## TEXT OF THE PROPOSED MEASURE COUNTY OF LOS ANGELES SAFER SEX IN THE ADULT FILM INDUSTRY ACT

### SECTION 4. (Cont.)

- E. *Notwithstanding any other provision of this chapter, if any immediate danger to the public health or safety is found or is reasonably suspected, the department may immediately suspend the adult film production public health permit, initiate a criminal complaint and/or impose any fine permitted by this chapter, pending a determination of an administrative review, as provided herein. Immediate danger to the public health and/or safety shall include any condition, based upon inspection findings or other evidence, that can cause, or is reasonably suspected of causing, infection or disease transmission, or any known or reasonably suspected hazardous condition.*
1. *Whenever an adult film production public health permit issued is immediately suspended or a fine is imposed pursuant to this subdivision E of this section, the department shall issue to the permittee so suspended or fined, a written notice to comply setting forth the acts or omissions with which the permittee is charged, specifying the sections of the Los Angeles County Code, California Health and Safety Code, blood borne pathogen standard, California Code of Regulations Title 8, section 5193 or the exposure control plan of the producer of adult films, or the combination of alleged violations, and informing the permittee of the right to an administrative review.*
  2. *At any time within fifteen (15) calendar days of service of such notice to comply, the permittee may request, in writing, an administrative review by the department to show cause why the imposed suspension or fine is unwarranted. The administrative review shall be held within fifteen (15) calendar days of the receipt of a request. A failure to request an administrative review within fifteen (15) calendar days shall be deemed a waiver of the right to such review.*
  3. *At any time prior to an administrative review or waiver thereof the recipient of a notice to comply issued pursuant to this subsection F, may correct the deficiencies noted in the notice to comply and request a reinspection at any time when the producer of adult films is actually filming an adult film.*
  4. *In the case of a request for reinspection as set forth in subsection E.3 above, the department shall reinspect as soon as practical. In the event the deficiencies noted in the notice to comply are corrected to the satisfaction of the health officer, the department has discretion to reinstate or modify any suspension of a permit and cancel or modify any fine imposed pursuant to this subsection F. If the department determines that the deficiencies identified in the notice to comply have been corrected, but the department elects not to reinstate the suspension or cancel the fine imposed pursuant to this subsection F, the department shall notify the permittee of this decision in writing. The permittee shall have fifteen (15) calendar days from receipt of said notification to seek an administrative review of this decision.*
- F. *The department may, after an administrative review or waiver thereof, modify, suspend, revoke or continue all such action previously imposed upon a permittee pursuant to this chapter or impose any fine imposed by law for violations of this chapter or any other laws or standards affecting public health and safety, including but not limited to the Los Angeles County Code, the California Health and Safety Code, the blood borne pathogen standard, California Code of Regulations Title 8, section 5193 or the exposure control plan of the permittee, or any combination thereof, or for interference with a county health officer's performance of duty.*



## TEXT OF THE PROPOSED MEASURE COUNTY OF LOS ANGELES SAFER SEX IN THE ADULT FILM INDUSTRY ACT

### SECTION 4. (Cont.)

- G. *A permit issued pursuant to this chapter may be reissued or reinstated, if the department determines that the conditions which prompted the suspension or revocation no longer exist and any fine imposed pursuant to this chapter has been satisfied*
- H. *In the event a permit is suspended or revoked, the producer of adult films whose permit was revoked shall cease filming any adult film unless and until the permit is reinstated or reissued.*

### Part 3 COMPLIANCE AND ENFORCEMENT

11.39.120 *Compliance with the provisions in this chapter shall be mandatory:*

- A. *The provisions of this chapter are in full force and effect in the county.*
- B. *Any producer of adult films filming any adult films within the county, including any person or entity owning or operating any business regulated by this chapter, must comply with the provisions of this chapter.*
- C. *In addition to any other penalty provided for under this chapter, consistent with the process set forth herein for notice and administrative review, the department may impose a fine on persons violating any provision of this chapter or any law, regulation or standard incorporated into this chapter. The department may impose a civil fine upon such violators in an amount not to exceed \$500.00 per violation, as appropriate. The imposition of such fines shall, in no way, limit the authority or ability to impose other requirements of this chapter or seek other remedies against alleged violators.*
- D. *Any person or entity who produces or films adult films for commercial purposes within the county without a valid adult film production public health permit, or any person, who violates any law, ordinance or regulation governing any activity regulated by this chapter, or who, upon demand of the county health officer, refuses or neglects to conform to a lawful order or directive of a county health officer pertaining to conduct regulated by this chapter, is guilty of a misdemeanor, punishable by fine of \$1, 000. 00, imprisonment in the county jail for a period not to exceed six months, or both. Each such act is punishable as a separate offense.*

11.39.130 *Health officer--Enforcement.*

*The county health officer may enter and inspect any location suspected of conducting any activity regulated by this chapter, and, for purposes of enforcing this chapter, the county health officer may issue notices and impose fines therein and take possession of any sample, photograph, record or other evidence, including any documents bearing upon adult film producer's compliance with the provision of the chapter. Such inspections may be conducted as often as necessary to ensure compliance with the provisions of this chapter.*

11.39.140 *Noncompliance with county health officer--Injunctive relief*

*Any act or failure to act which is a violation of this chapter may be the subject of a civil action to enjoin the person or entity so acting or failing to act to conform his or her conduct to the provisions of this chapter. A civil action to enforce the provisions of this section may be brought by the county counsel, the district attorney or any person directly affected by said failure to comply with the provisions of this chapter. The filing*





## TEXT OF THE PROPOSED MEASURE COUNTY OF LOS ANGELES SAFER SEX IN THE ADULT FILM INDUSTRY ACT

### SECTION 4. (Cont.)

*and prosecution of such an action shall, in no way, limit the authority or ability to impose other requirements of this chapter or remedies or penalties as permitted by law.*

#### **Part 4 OPERATIONS**

##### **11.39.150 Exposure control plan and reporting.**

*Every producer of adult films shall provide a written exposure control plan, approved by the department, describing how the requirements of this chapter will be implemented. The exposure control plan shall meet requirements established in departmental regulations.*

### SECTION 5.

Chapter 22.56.1925 of the Division 1 of Title 22 of the Los Angeles County Code is amended as follows:

##### **22.56.1925 Movie on-location filming.**

- A. Notwithstanding the other provisions of this Part 14, applications for movie on-location filming permits shall be filed with the filming permit coordination office which shall approve such application for a time period not to exceed the time period specified in this Title 22 where it finds that the findings set forth in Section 22.56.1860 and subsection A 1 of Section 22.56.1880 have been met by the applicant. In addition, in lieu of subsection A2 of Section 22.56.1880, the filming permit office shall also find that such approval will not result in a frequency of usage likely to create incompatibility between such temporary use and the surrounding area. Where an application is denied due to frequency of usage, the filming permit office shall specify the minimum time period between approvals which, in its opinion, is necessary to prevent such incompatibility.
- B. In interpreting the other provisions of this Part 14 in relation to movie onlocation filming, the filming permit office shall be substituted for the director, and the provisions of Sections 22.56.1840 and 22.56.1870 shall not apply.
- C. Any person or entity issued a permit for the filming of an adult film, as defined in section 11.39.010 of this Code, under this chapter or any other law authorizing the issuance of permits for commercial filming are required to maintain engineering and work practice controls sufficient to protect employees from exposure to blood and/or any other potentially infectious materials controls, in a manner consistent with California Code of Regulations, Title 8, Section 519.3. Any such permit shall contain the following language: "Permittee must abide by all applicable workplace health and safety regulations, including California Code of Regulations Title 8, Section 519.3, which mandates barrier protection, including condoms, to shield performers from contact with blood or other potentially infectious material during the production of films." The county shall charge, or shall direct any other person or entity contracting with the county to administer the film permitting process, to charge, entertainment industry customers seeking permits for the production of adult films a fee sufficient to allow periodic inspections to ensure compliance with the conditions set forth in Section 11.39.010.



## TEXT OF THE PROPOSED MEASURE COUNTY OF LOS ANGELES SAFER SEX IN THE ADULT FILM INDUSTRY ACT

### SECTION 6. COMPETING MEASURES

In the event that this measure and another measure or measures relating to the permit process for adult films shall appear on the same ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other relating to the permit process for adult films shall be null and void.

### SECTION 7. AMENDMENT AND REPEAL

This chapter may be amended to further its purposes by an ordinance passed by a majority vote of the Board of Supervisors. This chapter may not be repealed, except by an ordinance proposed either by petition or by the Board of Supervisors at its own instance and adopted by a vote of the electors, or by an amendment of the charter superseding the ordinance.

### SECTION 8. SEVERABILITY

If any provision of this Act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of the Act are severable.